

Enduring Power of Attorney (EPA)

What is an EPA?

An enduring power of attorney is a legal document which allows you (the donor) to appoint a person of your choice (the donee) to make financial and/or property decisions on your behalf. It is not an Enduring Power of Guardianship (EPG). By appointing an enduring attorney you are giving a person you know and trust the authority to make financial and property decisions for you.

You must be 18 years or over to make an EPA, and have full legal capacity. Having 'capacity' means that you understand the nature and effect of what having an EPA means and whether you have the ability to make your own reasonable decisions about your finances and property. If your capacity might be questioned when making an EPA you should speak to a medical practitioner prior to signing the EPA.

Nobody should ever force you or pressure you into signing an EPA.

What can my attorney do?

An attorney can manage your financial and property decisions in the same way that you can, including day-to-day decisions about budgeting, banking and investments, as well as for more significant and long-term financial decisions such as the purchase or sale of real estate. For example, an enduring attorney could sell your house or car on your behalf.

What can't my attorney do?

Your attorney cannot sign statutory declarations or affidavits on your behalf, vote for you, make or change your will, or make personal/lifestyle decisions for you.

Who should I appoint as my attorney?

Who you appoint as your attorney is a very important decision. Your attorney will manage your finances and can significantly impact your financial security and quality of life. There is no governing body that will directly monitor your attorney's actions, so you must make your choice of attorney carefully.

You should consider someone who –

- Is trustworthy;
- Will act in your best interests and make the same decisions you would for yourself;
- Is financially literate, and capable of keeping accurate records of all financial and property transactions; and
- Has the willingness and time.

Your attorney must be over 18 years of age and have full legal capacity. If you choose more than one attorney, you should consider whether they will be able to work together.

- A **sole attorney** is one person appointed as attorney.
- **Joint attorneys** are two people appointed as attorneys, who must act together and agree on all decisions that are made.
- **Joint and several attorneys** are two people appointed as attorneys, who can make decisions independently or together.
- A **substitute attorney** is a person you can appoint to act as your attorney in the event that your original attorney becomes unavailable, unsuitable or unable to act as your attorney.

When does an EPA come into operation?

When completing your enduring power of attorney, you can choose whether your attorney's authority will start: (a) immediately, or (b) only when you lose the capacity to make those decisions for yourself (the State Administrative Tribunal must declare this).

Even if the EPA powers start immediately, you can still manage your own finances while you have capacity, and your attorney must follow your instructions.

How long does the EPA last?

EPAs last until –

- You cancel (revoke) the EPA. You can only do this if you have legal capacity at the time of revocation; or
- The State Administrative Tribunal cancels (revokes) the EPA, which would need to happen if you no longer have legal capacity; or
- Your death.

What if I lose capacity but I haven't yet made an EPA?

An application to the State Administrative Tribunal may be made, seeking to appoint someone who will manage your financial and property decisions on your behalf.

If you do not have someone suitable or willing to be appointed, then the Public Trustee may be appointed.

Who do I give a copy of my EPA to?

You choose who receives a copy of your EPA. You may give one to your bank or insurer, or lodge it with Landgate if you own real estate. You don't have to give copies to friends, family or even your attorney, but make sure your attorney knows where the original is stored. You should keep a list of all the people/places that have a copy. Keep the original in a safe place such as a filing cabinet at home.

Does my attorney get paid for the role?

No.

Where can I get an EPA?

We strongly recommend getting legal advice before making an EPA. A lawyer can advise you on your situation and draft the EPA for you.

Alternatively, you can download a copy of the EPA template from www.wa.gov.au.

Contact us today

Phone: (08) 9440 1663

Email: info@elcs.org.au

Web: www.elcs.org.au



Mirrabooka Office

10 Cobbler Place, Mirrabooka WA 6061

Mon – Thurs 9:00am – 4:00pm

Fri 9:00am – 3:00pm

Joondalup Office

Building 1, Edith Cowan University
270 Joondalup Drive, Joondalup WA 6027

Tue - Wed 9:00am – 4:00pm

Fri 9:00am – 3:00pm